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FEDERAL ELECTION COMMISSION  
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**SENSITIVE**

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**FIRST GENERAL COUNSEL'S REPORT**

Pre-MUR 542

DATE RECEIVED: June 7, 2012

DATE ACTIVATED: July 16, 2012

EXPIRATION OF SOL:

Earliest: April 14, 2007

Latest: July 11, 2017

**SOURCE:**

*Sua Sponte* Submission

**RESPONDENT:**

International Longshoremen's Association,  
AFL-CIO, Committee on Political  
Education and Harold Daggett in his  
official capacity as treasurer

**RELEVANT STATUTE AND  
REGULATION:**

2 U.S.C. § 434(b)

11 C.F.R. § 104.3

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The International Longshoremen's Association, AFL-CIO, Committee on Political Education and Harold Daggett in his official capacity as treasurer ("ILA-COPE") notified the Federal Election Commission (the "Commission") under the Commission's *sua sponte* policy that it had not accurately disclosed financial activity totaling about \$1.8 million over a ten-year period.<sup>1</sup> In particular, as it explained in an audit findings report supplementing its submission,

<sup>1</sup> See ILA-COPE *Sua Sponte* Submission (Jun. 7, 2012) (referencing Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695 (Apr. 5, 2007) ("*Sua Sponte* Policy")); ILA-COPE Supp. *Sua Sponte* Submission at 19 (Oct. 30, 2012) ("Audit Findings").

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1 between 2005 and 2011, ILA-COPE under-reported disbursements by \$1,338,675.57 and  
2 receipts by \$491,800.40.<sup>2</sup> It also failed to report or keep records for independent expenditures it  
3 made in 2008 totaling \$130,414.26.<sup>3</sup> ILA-COPE concluded that this misreporting resulted from  
4 poor recordkeeping and communication as well as its staff members' general lack of knowledge  
5 regarding Commission reporting requirements.<sup>4</sup>

6 Based on the available information, the Office of the General Counsel ("OGC") has  
7 concluded that ILA-COPE violated 2 U.S.C. § 434(b) and (g) by failing to accurately disclose  
8 receipts, disbursements, cash on hand, and independent expenditures in its reports to the  
9 Commission. Because the issues are clear and well documented—based in part on ILA-COPE's  
10 substantial candor and cooperation in self-disclosing and thoroughly documenting its  
11 violations—we pursued this matter through Fast-Track Resolution.<sup>5</sup> Having completed  
12 negotiations with ILA-COPE, we now recommend that the Commission open a Matter Under  
13 Review, accept the attached executed Conciliation Agreement, and close the file in this matter.

## 14 II. FACTUAL SUMMARY

15 ILA-COPE is a separate segregated fund ("SSF") that first registered with the  
16 Commission in 1982.<sup>6</sup> For more than a decade, ILA-COPE has used outside accounting and  
17 compliance firms to assist with its financial management and Commission disclosure obligations.

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<sup>2</sup> See Audit Findings at 6. The Audit Findings provide the results of an investigation conducted by ILA-COPE's outside compliance consultant.

<sup>3</sup> *Id.* at 16.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> See *Sua Sponte* Policy, 72 Fed. Reg. at 16,698.

<sup>6</sup> Audit Findings at 4.

1 Its longtime outside accounting firm is Joseph L. Gil, CPA, P.C.<sup>7</sup> From approximately October  
2 2002 to December 2011, ILA-COPE's outside compliance consultant was Brand Law Group.<sup>8</sup>  
3 On February 12, 2012, ILA-COPE replaced Brand Law Group with PAC Outsourcing LLC.<sup>9</sup>

4 During the transition, PAC Outsourcing identified discrepancies between ILA-COPE's  
5 bank statements and the cash on hand it reported to the Commission.<sup>10</sup> After learning of the  
6 discrepancies, ILA-COPE instructed its new compliance firm to conduct an audit covering all of  
7 ILA-COPE's financial activity.<sup>11</sup> Shortly thereafter, on June 7, 2012, it filed the *sua sponte*  
8 submission now before the Commission.<sup>12</sup> And on October 30, 2012, after its compliance  
9 consultant completed its audit, ILA-COPE provided the completed audit report to OGC.<sup>13</sup>

10 The audit covered all financial activity from 2005 through 2011.<sup>14</sup> It began with 2005  
11 because that was the earliest year for which reliable bank reconciliation and other financial  
12 records were available, despite ILA-COPE's efforts to obtain records for earlier years.<sup>15</sup> And  
13 although the audit period closed at the end of 2011, ILA-COPE provided additional worksheets  
14 covering activity through September 30, 2012.<sup>16</sup>

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7 See ILA-COPE *Sua Sponte* Submission at 2.

8 *Id.* at 1-2.

9 *Id.* at 1.

10 See Audit Findings at 1-2.

11 ILA-COPE *Sua Sponte* Submission at 2.

12 *Id.* at 1.

13 See Audit Findings.

14 *Id.* at 2.

15 See *id.* at 6.

16 See *id.* at 19.

1 The audit revealed that, during that seven-year period, ILA-COPE had under-reported  
2 disbursements by \$1,338,675.57 and receipts by \$491,800.40.<sup>17</sup> The primary source of the  
3 discrepancies in disbursements—more than \$1 million of the total—was unreported  
4 administrative expenses such as legal fees, accounting fees, and bank fees.<sup>18</sup> ILA-COPE also  
5 found, however, that it misreported contributions to candidates and political committees.<sup>19</sup> As  
6 for the discrepancy in receipts, ILA-COPE found that the primary cause was the misreporting of  
7 interest and investment income, but it also misreported unitemized contributions it received.<sup>20</sup>

8 The audit report also explains that ILA-COPE's financial discrepancies began much  
9 earlier than 2005 and that, as of January 1, 2005, ILA-COPE already had over-reported its cash  
10 on hand by \$929,232.40.<sup>21</sup> As a result, by the end of 2011, it also had a cumulative cash-on-  
11 hand discrepancy of \$1,776,107.56.<sup>22</sup>

12 During the course of its audit, ILA-COPE also discovered that it failed to report and keep  
13 records for independent expenditures totaling \$130,414.26.<sup>23</sup> According to the audit report, in  
14 2008, ILA-COPE made two disbursements that appeared to be independent expenditures because  
15 of their "timing and the nature of the business performed by the recipient entities, namely,  
16 printing and event planning."<sup>24</sup> One disbursement was to a printer, dated October 15, 2008, for

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<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 11.

<sup>19</sup> *Id.* at 13-14.

<sup>20</sup> *Id.* at 11-12.

<sup>21</sup> *Id.* at 6.

<sup>22</sup> *Id.* at 10.

<sup>23</sup> *Id.* at 16.

<sup>24</sup> *Id.* at 16.

1 \$21,935.14; the other was to an event planner, dated November 10, 2008, for \$108,479.12.<sup>25</sup>  
2 ILA-COPE's auditors could not locate any documents to explain the disbursements, but they  
3 interviewed the vendors and confirmed that they provide "politically active" products to political  
4 organizations.<sup>26</sup> Thus, under the circumstances, ILA-COPE concluded that it should have treated  
5 these disbursements as independent expenditures and reported them as such.<sup>27</sup>

6 In its submission, ILA-COPE acknowledges that these failures constitute violations of the  
7 Federal Election Campaign Act of 1971, as amended (the "Act") as well as Commission  
8 regulations.<sup>28</sup> It concluded, however, that the particular violations at issue here were "the direct  
9 result of incomplete or inaccurate recordkeeping along with a lack of understanding of FEC  
10 reporting requirements."<sup>29</sup> The audit uncovered no evidence of intentional, willful misconduct.<sup>30</sup>

11 The submission also describes specific corrective measures that ILA-COPE is  
12 implementing to prevent future violations. First, ILA-COPE's outside compliance consultant  
13 now is reviewing and processing all political committee expenditures for signature by ILA-  
14 COPE's treasurer.<sup>31</sup> Second, the consultant now carries out monthly financial reporting,  
15 including bank reconciliations, to ensure disclosure reports are accurate before ILA-COPE

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *See id.* at 6, 10-14, 16 (discussing legal standards and applying those to audit findings).

<sup>29</sup> *Id.* at 2. For instance, in its supplemental submission, ILA-COPE explained that it failed to report the administrative expenses because its finance personnel mistakenly believed that only "political activity" was to be included and therefore never furnished the administrative expense information to the preparer of its reports. *Id.* at 10-11. As we discuss, ILA-COPE also noted that one of the corrective measures being implemented is training for those with responsibility for ILA-COPE's financial activity. *See id.* at 17.

<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.* at 17.

1 submits them to the Commission.<sup>32</sup> Third, the consultant plans to meet with ILA-COPE's  
2 treasurer and assistant treasurer, as well as other ILA-COPE finance staff, to provide training  
3 regarding their obligations under the Act and Commission regulations.<sup>33</sup>

### 4 III. LEGAL ANALYSIS

5 The Act and Commission regulations require committee treasurers to file reports of  
6 receipts and disbursements according to the requirements of 2 U.S.C. § 434.<sup>34</sup> These reports  
7 must disclose, *inter alia*, the total amount of receipts and disbursements and the cash on hand at  
8 the beginning of the reporting period.<sup>35</sup> Committees also are required to itemize certain receipts  
9 and disbursements and disclose each person who made contributions, or provided any interest or  
10 other receipts, or received any disbursements in an aggregate amount greater than \$200 within  
11 the calendar year, together with the date and amount of any such receipt or disbursement.<sup>36</sup>

12 Here, ILA-COPE acknowledges that it did not comply with the Act's reporting  
13 requirements because it failed to disclose an aggregate of \$1,830,475.97 in receipts and  
14 disbursements during the seven-year audit period and had a cash-on-hand discrepancy totaling  
15 \$1,776,107.56 by the end of 2011.<sup>37</sup> Based on our review of ILA-COPE's submission, we have  
16 concluded that between July 31, 2007, and February 2, 2012—the applicable time period in this

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.* ILA-COPE also has taken steps to improve communication between ILA-COPE and an affiliated committee to avoid the potential for excessive contributions. While excessive contributions are not at issue in this matter, the fact that ILA-COPE identified an additional perceived weakness and took steps to prevent a potential future violation is noteworthy.

<sup>34</sup> 2 U.S.C. § 434(a)(4); 11 C.F.R. § 104.1(a).

<sup>35</sup> 2 U.S.C. § 434(b); 11 C.F.R. § 104.3.

<sup>36</sup> 2 U.S.C. § 434(b)(3)-(6); 11 C.F.R. § 104.3(a)(4), (b)(3).

<sup>37</sup> Audit Findings at 6, 10.

1 case<sup>38</sup>—ILA-COPE failed to accurately disclose financial activity totaling \$1,644,347.99 (based  
2 on disbursements totaling \$984,689.35 and receipts totaling \$659,658.64) and overstated its cash  
3 on hand by \$516,542.39, both in violation of 2 U.S.C. § 434(b).<sup>39</sup>

4 The Act and Commission regulations also require committees to disclose and keep  
5 records concerning independent expenditures. A committee must report all of its independent  
6 expenditures on Schedule E as part of its regular reports to the Commission.<sup>40</sup> Additionally, if a  
7 committee's independent expenditures aggregate to \$10,000 or more during the calendar year up  
8 to and including the 20th day before an election, the committee must disclose the activity within  
9 48 hours.<sup>41</sup> And during the 20-day window before an election, a committee must disclose within  
10 24 hours any independent expenditure activity that aggregates to \$1,000 or more.<sup>42</sup> Finally,  
11 committees must maintain records with sufficiently detailed information so that their reports can  
12 be verified.<sup>43</sup>

13 ILA-COPE acknowledges that it did not make any of the required disclosures concerning  
14 \$130,414.26 in independent expenditures it made in 2008.<sup>44</sup> Nor did it maintain the necessary

<sup>38</sup> See 28 U.S.C. § 2462 (providing five-year limitations period beginning on date claim accrues). On July 24, 2012, ILA-COPE agreed to a 180-day tolling agreement so that it could complete its audit and supplement its *sua sponte* submission. And on January 24, 2013, it agreed to an additional 60 days of tolling to allow additional time for the Commission to review the proposed Conciliation Agreement.

<sup>39</sup> Audit Findings at 8-10. We calculated the increase in activity by aggregating the yearly discrepancy totals for receipts and disbursements. We calculated the cash-on-hand discrepancy by taking the difference between ending cash on hand for 2011 and the beginning cash on hand for 2007.

<sup>40</sup> 2 U.S.C. § 434(b)(6)(B)(iii), (d), (g); 11 C.F.R. §§ 104.3(b)(3)(vii), 104.4, 109.10(a).

<sup>41</sup> 2 U.S.C. § 434(g); 11 C.F.R. § 104.4(b)(2).

<sup>42</sup> 2 U.S.C. § 434(g); 11 C.F.R. § 104.4(c).

<sup>43</sup> 11 C.F.R. § 104.14(b).

<sup>44</sup> Audit Findings at 16.

1 records concerning these independent expenditures.<sup>45</sup> Thus, based on our review of its  
2 submission, we conclude that ILA-COPE failed to disclose to the Commission or keep records  
3 concerning independent expenditures totaling \$130,414.26, in violation of 2 U.S.C. § 434(b) and  
4 (g) and 11 C.F.R. § 104.14(b).<sup>46</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

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13 **V. CONCLUSION**

14 For the reasons discussed above, we recommend that the Commission accept the  
15 executed Conciliation Agreement attached to this Report.

16 **VI. RECOMMENDATIONS**

- 17 1. Open a Matter Under Review;  
18 2. Accept the attached Conciliation Agreement with ILA-COPE;

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- 1           3.     Approve the appropriate letter; and
- 2           4.     Close the file.

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Anthony Herman  
General Counsel

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Dated: Feb. 13, 2013

BY:

Daniel A. Petalas by DAB

Daniel A. Petalas  
Associate General Counsel for Enforcement

8  
9  
10

Peter G. Blumberg

Peter G. Blumberg  
Assistant General Counsel

11  
12  
13

Leonard O. Evans III

Leonard O. Evans III  
Attorney, Enforcement Division

14  
15

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